

Notice of Allowability	Application No.	Applicant(s)	
	09/403,392	AUSTIN ET AL.	
	Examiner	Art Unit	
	Tamthom N. Truong	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4-29-04.
2. ☒ The allowed claim(s) is/are 1-12 and 15-39.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>attached</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Claim 15: line 1, delete "**chemokine mediated**", and insert – gastrointestinal tract – in its place.

Line 2, delete "**wherein the chemokine binds to a CXCR2 receptor**".

Authorization for this examiner's amendment was given in a telephone interview with Mr. Leonard Mitchard on 05-24-04. Support for the amendment is on page 31 in the specification.

Allowable Subject Matter

Applicant's amendment of 04-29-04 has overcome the previous rejections of 112/1st and 2nd paragraphs by properly defining variables L^2 - L^5 , and by including "tautomer" in claim 1. It is recognized that the support for the "tautomer" of formula I comes from species of "thiazolo[4,5-d]pyrimidin-7(4H)-one". Thus, there is no new matter. The species in claim 6 have been divided, and recited in new claims 18-39, and thus, claim 6 is now in accordance with

Rule 1.141. The phrases "may be" and "may itself be" have been deleted from claims 1-5, and 7, and therefore, the "claim objections" have been obviated.

With no other outstanding rejection, and the cancellation of claims 13 and 14, pending claims 1-12 and 15-39 are allowed.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The invention is drawn to compounds, pharmaceutical compositions of substituted thiazolo[4,5-d]pyrimidine, and process of making said compounds, as well as method of treatment using them. The closest reference, **de Laszlo et. al.** (US 5,202,328), discloses an intermediate of formula 3. However, formula 3 encompasses 9 subgenera with no motivation to select the subgenus of thiazolo[4,5-d]pyrimidine **substituted with a moiety of -SR²**. All disclosed species of thiazolo[4,5-d]pyrimidine are substituted with an alkyl group at the position corresponding to the instant -SR². Thus, the reference does **not** give motivation for one skilled in the art to **make an intermediate** of thiazolo[4,5-d]pyrimidine substituted with -SR².

An update search yields a reference of **Beck** (US 6,107,294).

Art Unit: 1624

However, the disclosed genus has a substituent of =Y, which is not equivalent to the claimed R¹. Because the teaching of Beck does not lend motivation to make an intermediate in the teaching of de Laszlo et. al., the two teachings cannot be combined for a prima facie case of obviousness.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamthom N. Truong whose telephone number is 571-272-0676. The examiner can normally be reached on M-F (~10 am ~ 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached at 571-272-0674. If you are unable to reach Dr. Shah within a 24 hour period, please contact James O. Wilson, Acting SPE of 1624, at 571-272-0661.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



T. Truong

May 24, 2004



RICHARD L. RAYMOND
PRIMARY EXAMINER
ART UNIT 1624